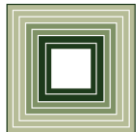


Justice and Public Safety Appropriations Subcommittee

Fiscal Overview: Judicial - Office of Indigent Defense Services

**Douglas Holbrook, Principal Analyst
Fiscal Research Division**

February 24, 2011



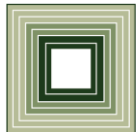
FISCAL RESEARCH DIVISION

A Staff Agency of the North Carolina General Assembly

Judicial - OIDS Fiscal Overview

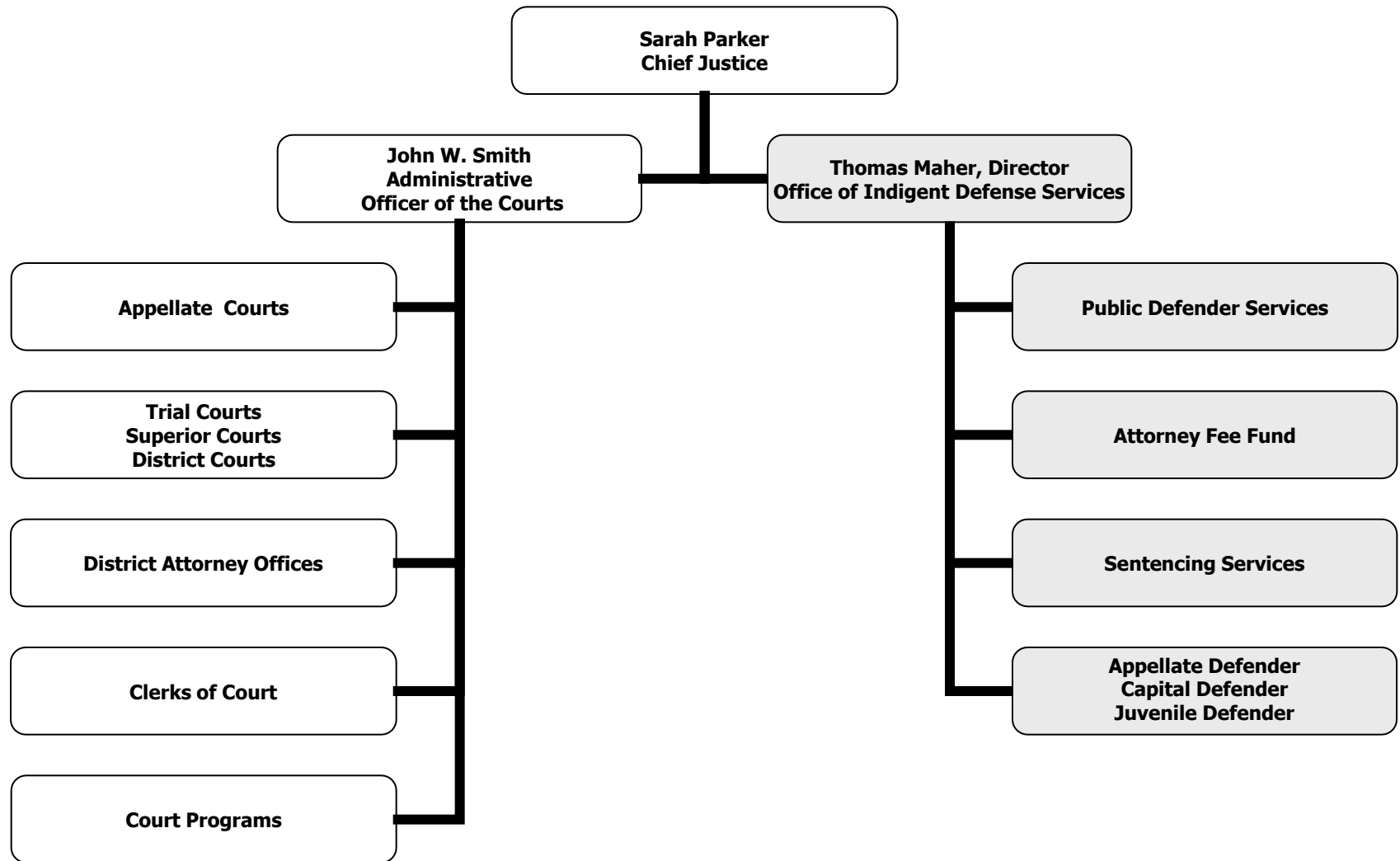
1. Overview of Programs and Funding
2. 2007 and 2008 Significant Legislative Actions
3. Overview of Current Year Funding and FY 2009-11 OIDS Budget Proposals
4. Budget Issues

Overview of OIDS Programs and Funding



FISCAL RESEARCH DIVISION
A Staff Agency of the North Carolina General Assembly

North Carolina Judicial System



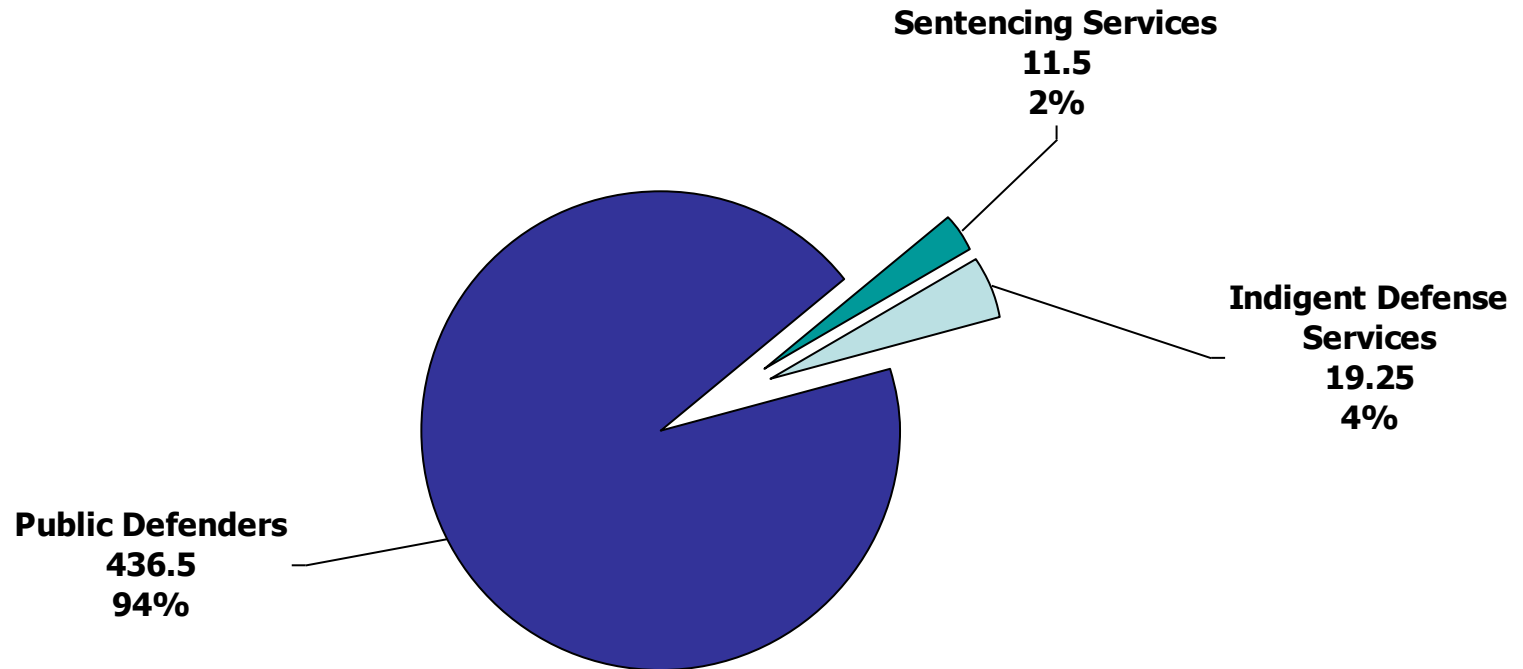
OIDS Mission

- Oversee the provision of legal counsel to indigent defendants in matters before state courts
- Administer the Sentencing Services Program
- Provide legal advice and assistance to Department of Correction inmates

OIDS Organization

- Public Defender Services
- Indigent Persons Attorney Fee Fund
- Prisoner Legal Services
- Sentencing Services
- Indigent Defense Services Administration

OIDS STAFF: 467 POSITIONS



Legal Counsel For Indigent Persons

- Legal counsel is provided either by court-appointed private attorneys or by state Public Defender Offices.
- OIDS provided legal representation in 279,400 cases before the courts in FY 2007-08:

	# Cases	%	\$ Cost	%
Court-Appointed Private Counsel	188,578	68%	\$ 71,202,391	73%
Public Defenders	90,822	32%	\$ 25,976,578	27%
Total	279,400		\$ 97,178,969	

Indigent Persons Attorney Fund

- FY10-11 certified budget: \$84.2 million
 - budgeted recoupment receipts: \$10.1 million
 - funds are used to pay private attorneys, expert witnesses, and investigators
- Budget for private attorney costs has increased 19% over the past 5 years
- Annual fee fund shortfall:

	<u>FY05-06</u>	<u>FY06-07</u>	<u>FY07-08</u>	<u>FY08-09</u>	<u>FY09-10</u>
Budget	\$69.9	\$70.6	\$81.9	\$83.0	\$94.0
Unpaid backlog	\$4.0	\$0.8	\$0.6	\$ 0.x	\$ 0.x
			(\$ million)		

Public Defender Service

- FY09-10 certified budget: \$37.5 million
 - budgeted receipts: \$150,327
 - funds are used to support positions, including attorneys, investigators and support staff, purchased services, equipment, supplies, etc.
- PD budget has grown 83% over the past 5 years
 - authorized new PD Offices in Districts 5 and 29B
 - authorized OIDS annually to create up to 20 new attorney and support positions in PD Offices using the Indigent Attorney Fund

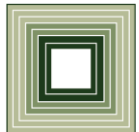
NC Prisoner Legal Services

- In 2005, the responsibility and funds for inmate legal services were transferred to OIDS from Correction
 - the State is legally obligated to provide legal assistance and access to the courts to inmates in DOC's custody
- OIDS continued to contract with the original DOC provider, NC Prisoner Legal Services, Inc. (PLS)
- Certified budget: \$2,814,262

Sentencing Services Program (SSP)

- Assess offenders and provide a detailed sentencing plan, including information on their risks and needs, available resources for supervision/treatment, to the judge prior to sentencing.
 - Judges may accept the plan, reject the plan, or select options within a plan.
 - Program operates in 27 districts: 7 are state administered; 1 is county administered; 18 operated by non-profit agencies
- Certified budget: \$2,776,431
 - includes \$200,000 NR expansion
 - 70% of budget is pass-through funding to the 19 county and non-profit programs
 - 20% budget supports the 8 state operated programs
 - 10% budget funds administrative costs
- The 27 programs operating in FY 2007-08 provided 1,490 plans at an average cost of \$1,673 per plan (\$1,885 when administrative costs are added)

2007 and 2008 Significant Legislative Actions



FISCAL RESEARCH DIVISION
A Staff Agency of the North Carolina General Assembly

2007 Significant Legislative Action

- Authorized 2 new Public Defender offices
 - District 5: New Hanover County
 - District 29B: Henderson, Polk, Transylvania
- Authorized OIDS to use the Private Attorney Fee Fund to establish up to 20 attorney and 10 support positions in Public Defender offices
- Provided funds to establish a six-year equipment replacement schedule: \$98,778 R

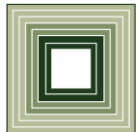
2007 Significant Legislative Action

- Provided funding to increase the hourly rate for assigned counsel in non-capital cases from \$65 to \$75 per hour, effective 1/1/08
- Increased continuation funding by \$4.8 million in FY07-08 and \$8.5 million in FY08-09 for the Indigent Persons Attorney Fund.
- \$175,000 NR to develop and pilot an electronic process for submitting and paying attorney fee applications

2008 Significant Legislative Action

- Funding for Private Assigned Counsel
 - \$1,135,000 NR to address the growth in demand and the expected shortfall
- Eliminate Public Defender Expansion Funds
 - S.L. 2007-323 provided \$1,570,057 R to expand the number of public defender offices and attorney positions around the State. S.L. 2008-107 eliminated these funds because the Indigent Services Commission did not recommend any new offices in FY 2008-09
- Pilot Program for Alternative Scheduling
 - Authorized OIDS to pilot an alternative scheduling program to reduce the amount of paid to attorneys for court room waiting time

Overview of Current Year Funding and FY 2009-11 OIDS Budget Proposals



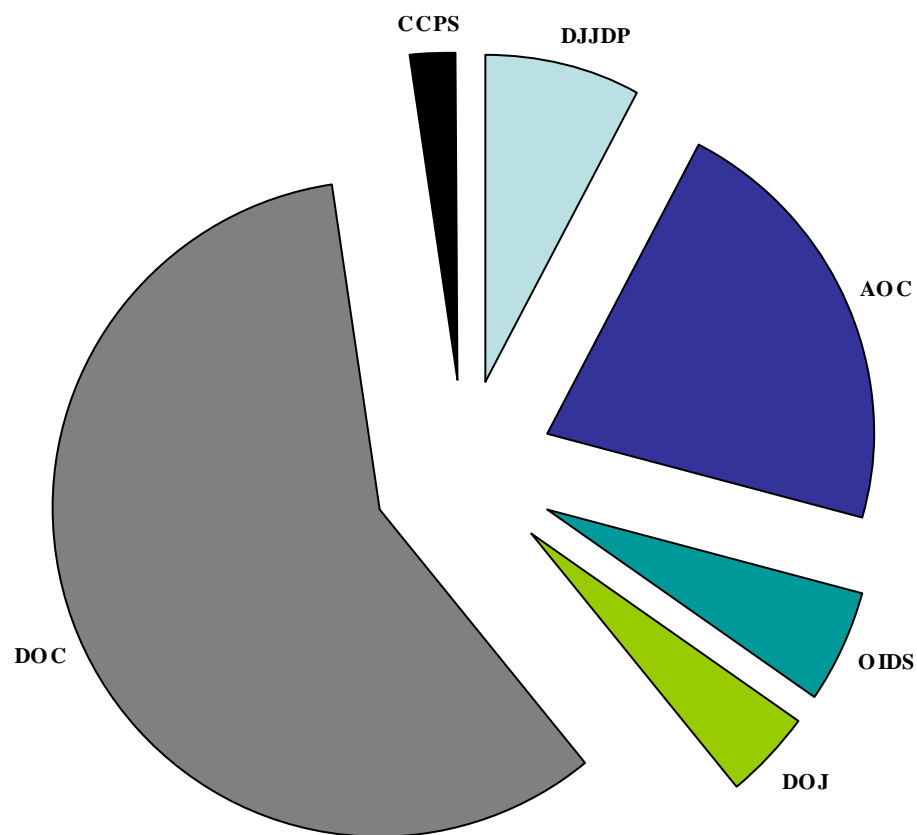
FISCAL RESEARCH DIVISION
A Staff Agency of the North Carolina General Assembly

JPS General Fund Budget FY 2008-09

State Appropriations

(\$ Million)

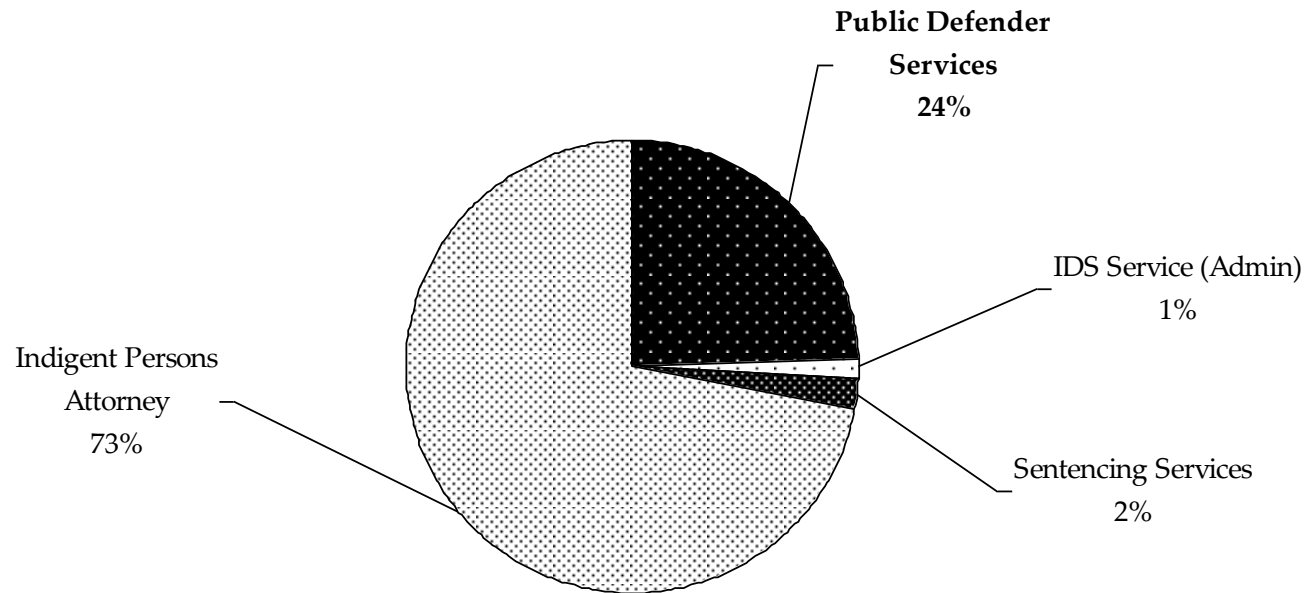
DOC	1,227.9
CCPS	44.1
DOJ	91.7
AOC	450.8
OIDS	115.6
<u>DJJDP</u>	<u>159.7</u>
 Total	 \$2,089



OIDS FY08-09 Authorized Expenditures

Purpose	\$ Amount	% Total
Salaries & Benefits	37,568,434	29.5
Purchased Services	86,658,086	68.2
Supplies; Property; Equipment	424,316	0.3
Aid & Assistance	2,435,075	1.9
Reserves & Other Expenditures	6,085	0.1
Total	127,091,996	100

Allocation of OIDS Certified Budget – FY 2008-09



OIDS General Fund Budget Proposals

	\$ Amount	% Change
2007-08 Actual Expenditures	108,213,450	
2008-09 Authorized Budget	118,137,192	+9.2
2009-10 Continuation Budget	133,881,190	+11.3
2009-10 Governor's Recommended Budget	123,716,016	-7.6
2009-10 Senate Proposed Budget	134,934,064	+9.1

FY 2009-11 Continuation Budget

Definition of “Continuation” Budget:

- the recommended funding necessary to continue a program *at the current level of services*; can be adjusted for certain factors such as inflation; annualization of position costs, and operating funds for new facilities
- OIDS’ FY09-10 continuation request, 133,881,190, is 11.3 percent above the current year authorized budget:
 - personal services: 1%
 - purchased services: 19.2%
 - pass-through funds: -8.2%

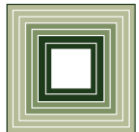
Governor's Recommended Budget

- **Recommends \$10.1 million, 7.6%, in reductions, including**
 - \$1.9 million: truth-in-budgeting
 - \$5.0 million: reduce PAC funding
 - \$2.6 million: eliminate Sentencing Services
 - \$122,190: reduce pass-through funding
- **Federal stimulus expansion**
 - no stimulus funding proposed

Senate Proposed Budget – FY 2009-10

- Provides \$1.1 million net increase over the Governor's recommended budget, including
 - \$3.5 million reduction to the continuation budget for the PAC fund
 - \$7 million NR expansion for the anticipated FY08-09 PAC fund backlog
 - \$1.6 million: management flexibility reserve
 - \$466,000: pass-through reduction

OIDS Budget Issues



FISCAL RESEARCH DIVISION
A Staff Agency of the North Carolina General Assembly

Attorney Fee Fund Projections

- OIDS projects a \$7 million backlog of approved but unpaid attorney fee applications that will be carried forward into FY2009-10 for payment.
 - Senate budget includes \$7 million NR expansion to address the backlog
- FY 2009-11 continuation budget includes \$16.1 million increase in Year 1 and \$14.3 million in Year 2
 - projected increases needed to address increased demand for indigent representation
 - if demand exceeds available funds, backlog of unpaid fee applications must be carried forward to be paid from the next year's funding.

Private Attorney Fee Payments

- Containing the growing cost of indigent representation continues to be a challenge
 - Annually indigency rates and private attorney costs outpace the growth in General Fund availability.
- In 2007, the Legislature appropriated \$4.8 million recurring to fund a \$10 increase in the hourly contract rate paid to private attorneys, effective January 1, 2008.
 - For FY 2008-09, the first full year of the increase, \$8.5 million recurring was provided.
 - The budget shortfall may cause you to reconsider this rate increase e.g. reduce or eliminate rate increase

OIDS Cost Saving Initiatives

- Each year, the budget bill includes authorization for OIDS to spend up to a specified amount from the Indigent Persons Attorney Fund to establish new attorney and support positions in the public defender offices around the State.
 - OIDS data indicates any new PD office would produce marginal cost savings
- Enhance/Maintain integrity of Attorney Fee Fund
 - automated processes
 - alternative eligibility determination process

OIDS Cost Saving Initiatives

- S.L. 2008-107 included two provisions to reduce indigent representation costs.
 - Section 14.1 authorizes OIDS to pilot an alternative scheduling approach to reduce the amount of waiting time for attorneys in court.
 - A 2005 study indicated that between 20 and 30 percent of OIDS payments to attorneys was for the time spent waiting in court.
 - Section 14.7 directs AOC and OIDS to consult to develop a statewide system to gather information earlier in the process for determining if persons are eligible for indigent defense services.
 - to ensure that only persons who are truly indigent would receive services.

OIDS Cost Saving Initiatives

- Senate budget includes a provision directing OIDS to study strategies to reduce the demand for indigent services, including
 - decriminalizing minor misdemeanor offenses for which jail sentences are rarely or never imposed
 - improving the manner in which potentially capital cases are screened and processed
- Increase recoupment
 - county recoupment rates average around 17%, but range from 2% up to 39%
 - Almost \$10 million recouped in FY 2007-08, 11% of total spending
 - Application fee appears to be rarely assessed or collected

Sentencing Services Program – Is it Cost effective?

- Is there a return on the investment?
 - a review of program data indicates that the plans appear to have no impact on judges' decision to impose community or active sentences
 - In FY 2007-08, the cost of a plan was significantly higher, 200 to 900 percent, than the average cost to provide indigent representation
 - Would these funds be better used to provide representation?